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HONOURABLE SRI JUSTICE B.PRAKASH RAO
AND
HONOURABLE SRI JUSTICE G.BHAVANI PRASAD

WRIT PETITION NO:6167 of 2007

DATED: 14-06-2007

Between:

1. M.Vijayalaxmi Reddy and another

..... PETITIONERS

AND

1. The Special Court under A.P.Land Grabbing (Prohi.) Act, Hyderabad and 4 others.

.....RESPONDENTS

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ORDER:(per Hon'ble Sri Justice B.Prakash Rao)

Heard Sri V.Vedula Venkata Ramana, learned counsel for the petitioners and Sri G.Vasantha Rayulu, and Smt. G.Suvarna Kumari, learned counsel for the contesting respondents, and at their request, the writ petition itself is taken up for disposal.

The petitioners herein, who are the applicants in LGC before the Special Court under A.P. Land Grabbing (Prohibition) Act at

Hyderabad, seek for a certiorari assailing the orders passed in I.A.No.986 of 2006 in L.G.C.No.58 of 2005 dated 12-03-2007 which has been disposed of along with another application filed by the respondents herein in I.A.No.1350 of 2006.

Briefly stated the facts of the case are that the petitioners herein have filed the main application under Section 8 of the A.P. Land Grabbing Act for declaration that the contesting respondents herein are the land grabbers and consequential eviction etc., mainly on the ground that the petitioners herein are the owners and whereas the respondents have encroached the property on more than one side and making constructions.

Contesting the same the respondents herein filed detailed counter-affidavit stating that their property is in different plots but however, submitted that the claim of the petitioners herein is not sustainable and in fact there is total variation in regard to the boundaries as claimed by the petitioners and also there is a specific case in para 14 itself that the properties as claimed are entirely different from the respondents property and their property is no way connected to the applicants. Even on a reading of the other paras in the very counter-affidavit, the respondents specifically in regard to the plots which they purchased in Plot Nos.9, 10 and 11 showed their boundaries and the extent vis-à-vis the plots claimed by the petitioners herein in the main application in plot Nos.12, 13, 14, 15,

16 and 17.

Admittedly, both set of those plots set up by the petitioners as well respondents are out of same survey number and virtually in the common name M.Yadaiah.

After completion of the evidence on their part, the present application has been filed *inter alia* seeking for appointment of Survey Commissioner for the purpose of conducting survey, demarcation and localization of the application schedule land in Sy.Nos.12 and 13 of Madhapur village. The application has been contested seriously by the respondents herein stating that there has been a surplus area and as per the proceedings under Urban Land Ceiling Act, the Government issued G.O.Ms.No.62 in favour of the respondents in regard to the same property. Hence, there is absolutely no warrant for any survey. Even otherwise, the claim is different and therefore there is no justification. Though it has been stated that there may not be any objection for localization but conducting survey is not warranted.

However, the Court below by taking into consideration the detailed submissions made by both sides fairly ran through the merits of both sides and by going through various documents and the material on record found that having regard to the same, there is no necessity for any survey. Hence, dismissed the application. The other application filed by the respondents also dismissed.

However, no writ petition has been filed.

Having heard the learned counsel on both sides and also on perusal of the material on record, the only question which arises for consideration in this case is as to whether under the facts and circumstances there is any warrant for appointment of Commissioner for the purpose of making local Survey in respect of the properties as claimed by the parties respectively.

At the out set, it has to be stated that the present application is filed under Rule 9 of Order 26 CPC which contemplates that wherever the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

On a bare reading thereof necessarily it contemplates exercise, though it is a discretion, on appraisal of the facts and circumstances vis-à-vis the pleas as set forth by both sides, to find out whether there is any dispute as to the identity and also the nature of claims as arose which may warrant due enquiry into the boundaries vis-à-vis the areas as claimed by them. Then the Court has to appoint a Commissioner and seek a local investigation. Necessarily, this is an exercise in addition to the parties to

substantiate their claims by evidence. Normally, wherever the claim set forth, in a dispute of a nature as stated above, apart from the evidence which may put forth on the record the Court has itself or by appointing a Survey Officer can make local investigation which will be a part of the record and which would aid ultimately the Court in coming to a right conclusion. Therefore, in consideration of application of this nature no enquiry be needed into the merits of the claim of either side nor consideration of the relative documents to see that having regard to any exercise already made or any exercise to which the parties are not present, to reject the same. In this case, unusually we find that the Special Court by going through the material on record virtually came to a conclusion that having regard to the proceedings or exercise which has already been done as relied on by the respondents herein there is no warrant to appoint any such Survey Commissioner. This approach is absolutely not warranted having regard to the very scope of Rule 9 of Order 26 CPC. Further, every Court must have mere rules of procedure which meant to aid the parties but not to reject any such request which will go in aid of the Court in a suit where the enquiry is into the actual *lis,* irrespective of the parties substantial case where applications are forthcoming to make such exercise which will have more weight than any other material or evidence from either side. It is seen that even in the counter in the present application the respondents have reiterated the very same fact that their house

boundaries and petitioners' properties boundaries are totally different and the same was confirmed by the MRO report. At this juncture, the stress as laid by the respondents counsel on the MRO report cannot have any weight for the purpose of considering an application for appointment of Commissioner or surveyor. The whole object of the report of the MRO is totally different and any say in that matter cannot conclude the virtue of the dispute which is involved in the main suit.

Having regard to the aforesaid circumstances, we are of the view that even on a bare reading of the pleadings in the main application vis-à-vis the specific detailed allegations as made by the respondents themselves in their counter-affidavit, it is a clear case where a dispute arose which requires local investigation for the purpose of elucidating the actual matter in dispute and ascertaining the correctness of the claim set forth by both sides as to the respective plots, areas and vis-à-vis the land in dispute. In the circumstances, the Special Court was not right in rejecting the application.

The writ petition is accordingly allowed and I.A.No.986 of 2006 in L.G.C.No.58 of 2005 is allowed. It is needless to mention that the Special Court shall expedite the disposal of the main case and the same shall be done not later than three months from today. No order as to costs.

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B.PRAKASH RAO, J

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G.BHAVANI PRASAD, J

14th June, 2007

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